University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Published Monthly, November to June, by the University of Pennsylvania Law School, at 236 Chestnut Street, Philadelphia, Pa., and 34th and Chestnut Streets, Philadelphia, Pa.

$2.50 PER ANNUM; FOREIGN, $3.00; SINGLE COPIES, 35 CENTS.

NOTES.

CARRIERS—LIMITATION OF LIABILITY—TIME-LIMIT FOR PRESENTING CLAIMS—For many years the law has been well established that a common carrier can in its contract with a shipper demand that notice of any loss of or damage to the shipment be given within a specified time, otherwise the carrier's liability for the same to cease. While this principle has been universally recognized, there have always been two questions primarily involved which have produced a wide range of dissension among the courts. In the first place there has been considerable disagreement as to the reasonableness of time allowed for presenting notice,[1] some courts holding

[1] Central, *etc.*, Ry. Co. v. Soper, 59 Fed. 879 (1894).

five days sufficient, others considering even thirty days unreasonable. In the second place there has been difficulty in determining whether the requirement had been waived by the carrier by certain conduct on its part, and, if so, whether it were permissible. In the past decade the old rules have been broken down by the regulations of commerce authorized by the Constitution and effected by Congressional act and the rulings of the Interstate Commerce Commission, so that the law of shipper and carrier has been considerably altered.

Under the Interstate Commerce laws it is probably unlawful today for a carrier to waive the requirements for presenting notice when once it is included in its tariff. This was clearly shown a few years ago by a Commission report: In the Matter of Bills of Lading.[2] Several railroads sought to be excused from enforcing the condition as to time-limit because of a general misunderstanding of the effect of state laws on the provision in their new bill of lading. While the Commission granted the request from the necessity of the situation when to do otherwise would "leave uncorrected grossly unjust and widespread discriminations," it insisted that its position in the matter was against such toleration of excuse by the railroads. "When it becomes apparent to carriers that they can not, ought not, or will not enforce the provisions contained in their established tariffs, whether in regard to matters of the kind here involved, demurrage, reconsignment, or other like practices, as well as to rates, they should change their tariffs in the manner prescribed by law so that their practices may be in conformity thereto. The Commission has not the authority under the law to order them to disregard their tariffs. . . ."[3]

This position of the Interstate Commerce Commission was strengthened by that taken by the Supreme Court of the United States in the recent case of *Georgia, Florida and Alabama Railway Company* v. *Blish Milling Company*.[4] In that case, although notice of loss had been given by telegraph, which the court deemed sufficient, the carrier denied this, insisting that its sole notice was the commencement of action by the shipper. The latter had urged that the carrier in making a misdelivery of his flour had converted it and thus abandoned the contract. The court declared that the effect of the stipulation could not be escaped by the mere form of the action. The opinion of Justice Hughes is significant: "The parties could not waive the terms of the contract under which the shipment was made pursuant to the Federal Act;[5] nor could the carrier by its conduct give the shipper the right to ignore these terms which were applicable to that conduct and hold the carrier to

[2] 29 I. C. C. 417 (1914).
[3] P. 419.
[4] 241 U. S. 190 (1916).
[5] Act to Regulate Commerce.

a different responsibility from that fixed by the agreement made under the published tariffs and regulations. A different view would antagonize the plain policy of the Act and open the door to the very abuses at which the Act was aimed." [6]

Considering these recent expressions of law by high judicial authority, it would seem that in future no carrier can ever waive the time-limit condition. Both carrier and shipper are absolutely bound by this as well as the other provisions in the tariff.

Furthermore, it is not improbable that it is now an administrative question for the Commission whether the time allowed for presenting notice is unreasonable. In any event the Supreme Court of the United States has recently sustained a very short period in the case of *Chesapeake and Ohio Ry.* v. *McLaughlin,*[7] there having been no attack of the provision by the Commission. A unanimous court held that a shipper who accepted a bill of lading which required that notice of loss or damage be filed with the company's claim agent within five days from the time of the removal of the stock shipped was bound absolutely by his agreement, which was on its face unobjectionable and reasonable. This decision affirmed the position taken by the court in two previous cases involving cattle shipments. Thus, in *Northern Pacific Railway Co.* v. *Wall,*[8] it was held that such a time-limit for the presenting of notice was a condition precedent to the shipper's right of recovery, and it had to be strictly complied with, although under the Carmack Amendment notice to the connecting or delivering carrier was sufficient, since it acted as agent for the initial carrier.

While the Commission and the Supreme Court of the United States are thus developing the law in the field opened to their jurisdiction by the Constitution and Acts of Congress, the state courts are continuing to handle the difficulties of this subject where intrastate shipments are involved. For them the old law is little changed; each court must decide for itself what is reasonable time and whether or not the carrier can waive the provision. So recently, in *Phillips et al.* v. *Seaboard Air Line Ry.,*[9] a ten day period was held an unreasonable time-limit for presenting notice for depreciation in value of delayed carloads of berries. In such cases as this the courts apply the test set forth by Morton, J., in *Cox* v. *Vermont Central Railway Company*: [10] "The question of reasonableness or unreasonableness does not depend on the possibility of giving notice in a particular case within the time limited, but on the course and

[6] P. 197.

[7] October Term, 1916. Decided December 4.

[8] 241 U. S. 87 (1916). See also Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Rankin, 241 U. S. 319 (1916).

[9] 89 S. E. 1057 (N. C. 1916).

[10] 49 N. E. 97 (Mass. 1898).

nature of the business, and on the time which ordinarily might be expected to elapse, in the usual course of business before the shipper or the consignee, with ordinary diligence, would be in a position to make a demand on the defendant. If, applying these considerations, the time within which the notice was to be given was reasonable, it would furnish no excuse that in a particular instance it proved insufficient."

It would seem, however, that with the gradual standardization of the bills of lading and other forms of contract used between shipper and carrier, the state courts would conform closely with the decisions of the Interstate Commerce Commission and the Supreme Court in deciding those cases where the Carmack Amendment has not denied them jurisdiction.

H. D. S.

CORPORATIONS—*Ultra Vires*—POWER TO LEND MONEY—The term *ultra vires* as to acts of a corporation or acts purporting to have been done by it, has been loosely used in several senses.[1] Sometimes an act is said to be *ultra vires* with reference to the rights of certain persons when the corporation can not legally act without their consent, and it may be held *ultra vires* with reference to some specific purpose when the corporation can not perform it for the purpose. It is said that in these two cases the right of the corporation to avail itself of the defence will depend upon the circumstances of the case,[2] but the courts by resorting to the doctrine of estoppel have held the corporation which has received the benefits of a transaction to be precluded from setting up the defence in so many instances as practically to make the doctrine a mere nullity.[3] A recent Georgia decision[4] exemplifies this class of case. There a statute provided that notice of stockholders' meeting for the purpose of issuing bonds should be published in some newspaper in the town or city where the principal office was located, once a week for four weeks prior to said meeting, and that stockholders should be duly notified. The court held that even though statutory notice of meeting was not given and one or possibly two persons holding but one share of stock were not present at the meeting, the company would be estopped, as to innocent purchasers for value, from setting up the defence that the bond issue was void, all the statutory requisites being set forth on the face of the bonds. It is patent that this act was one which the

[1] Miner's Ditch v. Zellerbach, 37 Cal. 543 (1869).

[2] Georgia Granite Co. v. Miller, 87 S. E. 897 (Ga. 1916).

[3] Western & Southern Fire Ins. Co. v. Murphy, 156 Pacific 885 (Okla. 1916).

[4] Georgia Granite v. Miller, *supra* (note 2).